

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6995

BILL NUMBER: HB 1367

NOTE PREPARED: Apr 30, 2003

BILL AMENDED: Apr 3, 2003

SUBJECT: Public Nudity.

FIRST AUTHOR: Rep. Stilwell

FIRST SPONSOR: Sen. Bray

BILL STATUS: Enrolled

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) The bill has the following provisions:

(A) It provides that a person commits performing sexual fondling in the presence of a minor, a Class D felony, if the person: (1) engages in sexual intercourse; (2) engages in deviate sexual conduct; or (3) touches or fondles the person's own body; in the presence of a child less than 14 years of age.

(B) It provides that a person commits public indecency, a Class A misdemeanor: (1) if the person appears nude in a public place with the intent to arouse the person's own sexual desires or the sexual desires of another person; or (2) if the person is at least 18 years of age and appears nude in a public place with the intent to be seen by a child less than 16 years of age.

(C) It makes public indecency a Class D felony if the person has a prior unrelated conviction for public indecency.

(D) It provides that a person who appears nude in a nonpublic place with the intent to be seen by persons other than invitees or occupants of that place commits indecent exposure, a Class C misdemeanor.

(E) It provides that a person who appears nude in a public place commits public nudity, a Class C misdemeanor.

(F) It makes public nudity a Class B misdemeanor if the person intends to be seen by another person, and makes a second offense a Class D felony.

(G) It makes public nudity a Class A misdemeanor if the person appears nude in a Department of Natural Resources owned or managed property with the intent to arouse the sexual desires of the person or another person, or on school grounds or in a public park; and makes a second offense a Class D felony.

Effective Date: July 1, 2003.

Explanation of State Expenditures: (Revised) The following summarizes the proposed changes in laws concerning nudity and public indecency.

| Offense | Act | Current Penalty | Proposed |
|--|--|--|--|
| In a Nonpublic Place | | | |
| Performing Sexual Conduct in Presence of a Minor | Engaging in sexual intercourse or deviate sexual conduct; in the presence of a child less than 14 years of age | None | Class D Felony |
| Indecent Exposure | Appearing in a state of nudity where the person can be seen by persons other than invitees and occupants of that place | None | Class C Misdemeanor |
| In a Public Space | | | |
| Public Indecency | Appearing in a state of nudity to arouse sexual desires of the person or another person | Class D Felony | Class a Misdemeanor; Class D Felony for Second Offense |
| Public Indecency | Appearing in a state of nudity with intent to be seen by child under 16 | Class D Felony | Class A misdemeanor; Class D felony for second offense |
| Public Nudity | Appearing in a state of nudity | Class A Misdemeanor | Class C misdemeanor |
| Public Nudity | Appearing nude with intent to be seen by another person in a public place | Class A Misdemeanor | Class B misdemeanor; Class D felony for second offense |
| DNR Owned or Managed Property | | | |
| Public Nudity | Knowingly or intentionally appearing nude | Class A Misdemeanor; Class D felony for second offense | Class C Misdemeanor |
| Public Nudity | Appearing nude with intent to arouse the sexual desires of the person or another person, | Class D felony | Class A misdemeanor; Class D felony for second offense |
| School Grounds or in a Public Park | | | |
| Public Nudity | Knowingly or intentionally appearing nude | Class D Felony | Class a Misdemeanor; Class D Felony for Second Offense |

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$25,087 in FY 2001. Individual facility expenditures ranged from \$18,520 to \$54,465. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: (Revised) If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase.

Criminal fines are deposited in the Common School Fund. The following shows the criminal fines associated with each of the offenses.

| Offense | Potential Criminal Fine |
|---------------------|-------------------------|
| Class C misdemeanor | \$500 |
| Class B misdemeanor | \$1,000 |
| Class A misdemeanor | \$5,000 |
| Class D felony | \$10,000 |

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: The following shows the periods of incarceration.

| Offense | Potential Incarceration |
|---------------------|-------------------------|
| Class C misdemeanor | Up to 60 days |
| Class B misdemeanor | Up to 180 days |
| Class A misdemeanor | Up to one year |

If more defendants are detained in county jails prior to their court hearings for a Class D felony, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs Association, Department of Correction.

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